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10 ATTORNEYS FOR PLAINTIFF

11
 12
 13 **UNITED STATES DISTRICT COURT**
 14 **FOR THE DISTRICT OF COLUMBIA**

15 FRANCISCO GARZA VARGAS)
 16 a native and citizen of Mexico)

17 Plaintiff)

18)
 19 vs.)

CASE NO:

20 U.S. DEPARTMENT OF STATE)
 21 2201 C Street, N.W.)
 22 Washington, DC 20520)

23 Defendant)
 24)

25 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

26
 27 This is an action under the Freedom of Information Act ("FOIA"), 5 U.S. C. Section
 28 552, for declaratory and injunctive relief to compel the disclosure and release of agency

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1 records improperly withheld from Plaintiff Francisco Garza Vargas by Defendant
 2 Department of State.

3 Mr. Garza seeks to compel the release of records that pertain to him and are
 4 maintained by Defendant. U.S. Department of State ("DOS"). Despite Mr. Garza's
 5 compliance with all statutory requirements, Defendant has been largely unresponsive to
 6 his valid FOIA request.
 7

8 JURISDICTION AND VENUE

9
 10 1. This Court has jurisdiction over this action pursuant to 5 U.S.C. Section
 11 552(a)(4)(B) and 28 U.S.C. Section 1331.

12 2. Venue lies in this district pursuant to 5 U.S.C. Section 552(a)(4)(B) and 28
 13 U.S.C. Section 1391(e).

14 3. Plaintiff seeks declaratory relief under 28. U.S. C. Section 2201-2202 and Rule
 15 57 of the Federal Rules of Civil Procedure.
 16

17 PARTIES

18 4. The Plaintiff, Francisco Garza Vargas was born on October 5, 1964 in
 19 Monterrey, Nuevo Leon, Mexico where he currently resides. Plaintiff is the requester of
 20 the records being improperly withheld by the Defendant.
 21

22 5. The Defendant, The U.S. Department of State ("DOS") is an agency of the
 23 Executive Branch of the United States Government, DOS is an agency within the
 24 meaning of 5 U.S.C. Section 552(f)(1) DOS has possession, custody, and control of
 25 records to which the Plaintiff seeks access.
 26
 27
 28

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STATEMENT OF THE FACTS

6. The Plaintiff has had a tourist visa to enter the United States for most of his life.

7. Plaintiff has made innumerable visits to the United States during his lifetime .

8. The last tourist visa Plaintiff was given by Defendant was issued on June 18, 2009 and is valid until June 10, 2019.

9. On October 17, 2016, Mr. Garza sought to enter the United States on his tourist visa (foil SMTRO 0030604481) through McCarran International Airport in Las Vegas, Nevada. He was told by the officer at the airport that his visa had been revoked and was no longer valid. Mr. Garza had never received any prior oral or written notice informing him that his tourist visa had been revoked. Mr. Garza was therefore denied entry into the United States. Curiously, on or about October 2016, his son, Francisco Alberto Garza Oyervides, date of birth 10-3-2002, was also denied entry into the United States at San Ysidro, California, at the border with Tijuana, Mexico, when the border official told him that his tourist visa had been cancelled. The official also confiscated his visa. Like his father, the son had not received any prior notice that his tourist visa had been revoked.

PLAINTIFF'S FOIA REQUEST

10. On November 6, 2018 Eva Garcia Mendoza Esq., counsel for Plaintiff Francisco Garza Vargas sent a FOIA request to DOS on behalf of Mr. Garza requesting:

" all documents upon which the Consulate relied upon to cancel my tourist visa and thereafter to deny my request for a new visa. This request includes all reasons used to cancel my tourist visa and to refuse my request for a new visa,

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1 whether it is because it believes I am an intending immigrant or for any other
 2 reasons."

3 Plaintiff signed an authorization allowing his counsel, Eva Garcia Mendoza to
 4 make this request on his behalf.

5 11. On November 21, 2018, Defendant sent a letter to Attorney Garcia Mendoza
 6 acknowledging receipt of the Freedom of Information Act (FOIA) request dated November
 7 6, 2018 stating it had received the request on November 19, 2018 and was assigning it
 8 tracking number F-2019-01466.
 9

10 12. On or about March 20, 2019, Attorney Garcia Mendoza received an email
 11 from Defendant together with a cover letter and 20 documents in full and 10 in part as a
 12 response to his FOIA request.

13 13. The cover letter stated that Defendant was permitted to release only those
 14 documents which were submitted or received by the applicant/requestor or others who
 15 have provided written authorization for release of their documents pursuant to Medina-
 16 Hincapie v. Department of State et al, 700 F.2d 737 (DC Cir. 1983)
 17

18 14. The letter informed Attorney Garcia Mendoza that an Administrative Appeal
 19 could be taken by writing to the Appeals Officer, Appeals Review Panel, Office of
 20 Information Programs and Services (IPS), U.S. Department of State, State Annex 2 (SA-
 21 2), 515 22nd Street, NW, Washington, D.C. 20522-8100 or faxed to (202)261-8571.
 22

23 15. On April 15, 2019, the Plaintiff, through Attorney Garcia Mendoza submitted
 24 an Administrative Appeal by fax to the fax number indicated in the March 20, 2019 letter
 25 from Defendant stating inter alia that the Hincapie case. did not apply to visa revocation
 26 cases and therefore Defendant's reliance on that case as well as reliance on 5 U.S. C.
 27
 28

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1 552(b)(3) was misplaced because that statute and that case deal with denials of visas
2 and not revocation of visas.

3 16. To date, Defendant has not responded to the Administrative Appeal nor
4 provided the records requested by Plaintiff in his FOIA request, notwithstanding FOIA's
5 requirement that an agency respond to an administrative appeal within 20 working days.

6 17. Plaintiff has exhausted the applicable administrative remedies with respect to
7 his FOIA request to DOS.
8

9 18. DOS has wrongfully withheld the requested records from the Plaintiff.
10

11 CLAIM FOR RELIEF

12 1.

13 DEFENDANT DOS HAS FAILED TO DISCLOSE 14 AND RELEASE RECORDS RESPONSIVE TO PLAINTIFF'S FOIA 15 REQUEST

16 19. Plaintiff repeats and re-alleges each and every allegation contained in the
17 preceding paragraphs and incorporates the same by reference as if fully set forth herein.

18 20. DOS has violated Plaintiff's right to its records under 5 U.S.C. Section 552.

19 21. Plaintiff is being irreparably harmed by reason of Defendant's unlawful
20 withholding of requested records and Plaintiff will continue to be irreparably harmed
21 unless Defendant is compelled to conform its conduct to the requirements of the law.
22

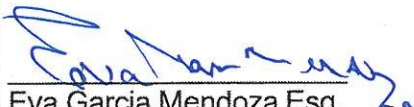
23 22. Defendant DOS has violated the FOIA statutes by failing to produce any and
24 all non-exempt records responsive to Plaintiff's FOIA request within the twenty(20) day
25 time period set forth in the law.
26
27
28


REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Assume jurisdiction over this matter.
2. Order Defendant to produce the requested agency records held by DOS in their entireties and to make copies available to Plaintiff through his attorney.
3. Provide for expeditious proceedings in this matter.
4. Award Plaintiff costs and reasonable attorney's fees in this action as provided by **5 U.S. C. Section 552(a)(4)(E)**; and
5. Grant any other relief the Court deems appropriate

Dated this 21st day of May, 2019


Eva Garcia Mendoza Esq.
Attorney for Plaintiff


Xiaosheng Huang Esq.
Attorney for Plaintiff

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